

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH HILL : CIVIL ACTION
 :
 v. :
 :
 SUPERVISOR, PHILADELPHIA :
 COUNTY PROBATION DEPARTMENT : NO. 97-4996

MEMORANDUM ORDER

Plaintiff is a prisoner at SCI Graterford. He brings this action seeking "full access and disclosure of his personal file" allegedly maintained by the defendant Supervisor of the Philadelphia County Probation Department.

Plaintiff initiated this action on May 6, 1997 by filing in the Philadelphia Court of Common Pleas a pro se complaint captioned "Plaintiff Seeks Access to Personal File Under the Public Record Act Statute 65 P.L. 66.1." Defendant removed the case to this court, construing plaintiff's claim as one pursuant to 42 U.S.C. § 1983 for a violation of his federal constitutional rights. Defendant contends that the court thus has federal question jurisdiction. Plaintiff responds unequivocally that his claim is solely one for a release of information under the "Public Record Act Statute," referring to the Pennsylvania Right-to-Know Act which is codified at 65 Pa. C.S.A. §§ 66.1-66.4.

The propriety of removal turns on whether the case is

within the court's original jurisdiction. Franchise Tax Bd. of the State of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 8 (1983). Whether the case arises under the Constitution, laws or treaties of the United States is determined from the face of plaintiff's well-pleaded complaint. Id. at 10.

Plaintiff includes in his complaint a narrative of the circumstances surrounding the September 29, 1992 search of his home which he states was unconstitutional. Plaintiff, however, asserts no claim for relief in this action premised on the purportedly unconstitutional search. Indeed, any such claim would be barred by the two year statute of limitations. See Wilson v. Garcia, 471 U.S. 261, 280 (1985); Knoll v. Springfield Township, 763 F.2d 584, 585 (3d Cir. 1985); Sandutch v. Muroski, 684 F.2d 252, 254 (3d Cir. 1982); 42 Pa. C.S.A. § 5524 (West Supp. 1997).

Plaintiff never mentions § 1983 in his complaint or other submissions, and defendant acknowledges that a § 1983 claim is not the proper mechanism to obtain the access to the county government records which plaintiff seeks.

A court is obligated to ensure that its subject matter jurisdiction has been properly invoked and to do so sua sponte where necessary. Liberty Mut. Ins. Co. v. Ward Trucking Co., 48 F.3d 742, 750 (3d Cir. 1995); American Policyholders Ins. v. Nyacol Prods., 989 F.2d 1256, 1258 (1st Cir. 1993) ("a federal

court is under an unflagging duty to ensure that it has jurisdiction"), cert. denied, 510 U.S. 1040 (1994); Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court"), cert. denied, 484 U.S. 1021 (1988).

Plaintiff's sole claim for relief is predicated on the Pennsylvania Right-to-Know Act. The state courts provide the exclusive forum for litigating claims under that statute. See Martinson v. Violent Drug Traffickers Project, 1996 WL 411590, *2 (D.D.C. July 11, 1996) (federal court "lacks subject matter jurisdiction over the plaintiff's claim brought pursuant to Pennsylvania's Right-to-Know Act"); Proffitt v. Davis, 707 F. Supp. 182, 188-89 (E.D. Pa. 1989) (state court action is exclusive remedy for denial of information under state Right-to-Know Act).

Because the court lacks subject matter jurisdiction to adjudicate plaintiff's claim, this case will be remanded.

ACCORDINGLY, this day of April, 1998, consistent with 28 U.S.C. § 1447(c), **IT IS HEREBY ORDERED** that the above action is **REMANDED** to the Court of Common Pleas of Philadelphia.

BY THE COURT:

JAY C. WALDMAN, J.